

## HAYASHIDA CONVICTED

### Of Manslaughter In the First Degree.

(From Saturday's Advertiser)

At 9:58 last night, after deliberating for an hour and eight minutes, the jury found Hayashida guilty of manslaughter in the first degree for the killing of another Japanese at Waialua in the latter part of May this year.

Hayashida was indicted at the June term for murder in the first degree, and his case was taken up the present term as one of those continued from the previous term. An error in the indictment placing the crime at Waipahu was discovered while a jury was being empaneled, when a nolle prosequi was entered and the defendant released only to be immediately rearrested. The present grand jury brought in a new indictment charging Hayashida with murder in the first degree, under which he was tried with the result above noted.

Mr. Cathcart noted exceptions to the verdict and gave notice of motion for a new trial.

Hayashida took the witness stand on his own behalf shortly after 3 o'clock in the afternoon. His evidence revealed that self-defense was his reliance. He said that Sato was advancing toward him, with a knife in his hand, and that he then grasped a stick and struck Sato on the head with it.

Deputy Attorney General Prosser objected to a question about previous quarrels between the slayer and the slain man. Mr. Cathcart quoted authorities to show an exception to the rule that quarrels antecedent to a homicide could not be introduced in defense. They were to the effect that where an overt act of the victim was committed or attempted subsequent to quarrels between him and the defendant on other occasions, evidence of such quarrels was admissible to show that the defendant had reason to fear great bodily harm or danger to his life. While the case was examining the authorities, Mr. Prosser withdrew the objection.

## ALL ABOUT THE COURTS

### Lee Toma Resists Pay- ment of a Fee.

Harry J. Johnston vs. Lee Toma & Co., Ltd., came up for trial before Judge Robinson. L. Andrews and W. S. Fleming for plaintiff; R. W. Breckons and J. G. Pratt for defendant. The following jury was found satisfactory as drawn: Patrick Ryan, Lewis C. King, Chas. P. Osborne, Percy Lishman, James Armstrong, H. C. Carter, J. J. Sullivan, Samuel Nowlin, Harry A. Wilder, Hiram Kaaha, H. P. Benson and Wm. F. Ewing.

It is a claim for \$5057.02 with legal interest from the date of the filing of the complaint and for costs. The claim is based on services of the plaintiff as custom house broker, acting in the name of Hind, Rolph & Co., Ltd., whereby the defendant was saved \$17,871.08 in duties on importations of Manila cigars. Mr. Johnston made the protest against the assessment of the collector of customs to the Treasury Department in Washington, which was sustained. In his complaint Mr. Johnston says that the reasonable value of his services, "according to the standard of compensation in similar cases prevailing in Honolulu, Washington and New York, was and is one-third of the amount saved to the importer."

Plaintiff rested at 3 p. m. and the jury was excused until 4 o'clock while Mr. Breckons presented a series of motions, which he said would have a bearing on the instructions of the court to the jury. "Were any dividends paid by Lee Toma & Co. after the cigars were passed?" Mr. Andrews asked this question of his last witness, but subject to objection. It was objected to by Mr. Breckons and disallowed by the court.

The case was argued to the jury at 6:30, when Judge Robinson excused the jury until Monday at 9 a. m., then to receive the charge of the court.

**SMALLER BOND ORDERED.**  
On the motion for foreclosure of mortgage of H. Hackfeld & Co., Ltd., vs. W. C. Achi and others, Judge Robinson granted the motion to require security for payment of interest, except that the bond is to be \$2000 instead of \$2000. The bond is to be filed within ten days and the sale is postponed from October 22 to November 12.

**COURT NOTES.**  
Judge Gear appointed Frank E. Thompson as guardian ad litem for all of the minors in the equity suit of John A. Cummins vs. Joseph O. Carter, trustee, and others. Plaintiff has filed a bill in demurrer as to Carter by himself and several other respondents, jointly who had demurred to the complaint.

A rejoinder in demurrer is filed in the case of Kahehika K. Ai and W. K. Castle, trustee, vs. Kapuni Estate, Ltd.

T. Yoshikawa vs. Koi Hin Bank, Ltd., has been discontinued.

Judge De Bea will call the civil jury tomorrow morning at 9 o'clock.

Tate vs. Tate was further continued by Judge Robinson yesterday.

## SOME MORE BANDERLOGS

### Home Rulers Put Up a Ticket In the Fourth.

The Home Rulers of the Fourth District met in convention yesterday morning, and under the guidance of Senator Kakuokalani, put the following ticket in nomination for legislative honors in the lower house:

S. K. Kamakia, Henry Meheula, David Nott, S. Faahao, J. K. Kaohi and W. S. Makekani.

Kaohi is the son of Senator Kaohi of Hawaii.

A district platform was also read and adopted in which are the following items. The bills presented in Congress by R. W. Wilcox, are to be pushed forward by Charles Nottley, the Home Ruler, presuming that he will be elected as delegate.

Cognizance is taken of Delegate Kakuokalani's alleged failure to have any bills passed in Congress.

The Home Rulers intend to make a special attack during the campaign on Prince Kuhio for presenting "Bill No. 15,226" pertaining to the adoption of the English language as the official language of the Hawaiian legislature and all departments of the Territorial government.

They will work above all things for the enactment of a county law.

## CUT HEAD WITH BOTTLE

### Almost a Deadly Row In a Sleeping Room.

A row which started yesterday afternoon in the sleeping apartment of a Chinese store in the lane leading to the Hotel street Chinese theater, almost had a tragic ending. One Chinaman assaulted another using a soda water bottle upon the forehead of his victim. The bottle tore open the forehead making a deep gash which extended almost from the hair line to the eyebrow. Blood flowed copiously. After the Chinaman found he was not dead he ran to the police station, was given an officer to arrest his assailant, and then ran back to the store.

Officer Luahiwa found Ah Cho, the man who had made the assault, lying on a matting bed, with an old coat wrapped about his head. This was covered with blood. The officer thought at first that Ah Cho was dead, but when he saw the officer he jumped to his feet, and then complained that the wounded man had kicked him in the side.

The soda water bottle with which Ah Cho had made the assault was found, covered with blood.

## MORE NOMINATIONS FOR THE LEGISLATURE

Since the nominations of E. Faxon Bishop of Oahu and J. L. Coke of Maui for the Senate, the following nominations have been filed in the office of the Secretary of the Territory:

George C. Hewitt of Waiohine, Hawaii, for the Senate.

J. W. Kellikoa, Second Representative District, Hawaii, for the House of Representatives.

J. E. Kekipi, Geo. P. Kaimakaoale and George Kauli, Third Representative District, Maui, etc., for the House of Representatives.

Attention may here be called to the notice which appeared in the Advertiser yesterday, to be repeated at future dates, by A. L. C. Atkinson, Secretary of Hawaii, to candidates for election to the Legislature. This notice states the qualifications of Senators and Representatives, also the requirements that all nominations must be filed not later than October 29, being ten days before the day of the election, and that each nomination must be accompanied by a deposit of \$25 and signed by not less than twenty-five duly qualified electors of the district for which the candidate is nominated.

### Blow Up House.

Lupini Gomes was brought over from Koolaula yesterday and locked up in the Police Station. He is charged with having, on the 11th of September, attempted to blow up the house in which one Halse and his wife were sleeping. Giant powder was used but failed to kill the intended victims.

### ASSHOLE-BUTCHER'S MANAGER

Mr. Albert E. Shiner, manager of the Asshole-Butchering Association, Cape Town, Africa, says: "During my trip in the Transvaal I continued a severe cold, and am pleased to state that in Chamberlain's Cough Remedy I found almost relief and after continuing it for a few days was entirely free of the distressing indisposition." For sale by all druggists and dealers. Chamberlain & Co., Ltd., agents for Hawaii.

## JUDGE HIGHTON ON THE HAWAIIAN JURY SYSTEM

Honolulu, Sept. 30, 1904.

Editor Advertiser: Anything Mr. David L. Withington may write is worthy of earnest consideration. Therefore his letter to the Advertiser, upon your editorial entitled "Collapse of the Jury System in Honolulu," should and will attract general attention.

I do not agree in all points either with the editorial or with Mr. Withington's letter. I do not believe the jury system in this Territory has collapsed; though I admit that it is hampered, and almost blocked, by a bad law that needs speedy and thorough revision. Nor do I endorse strictures upon the judges, who do not make the law and whose sworn duty is to declare it, as they find it. In this as in many other matters, the responsibility must rest upon the legislature.

It is useless to discuss technicalities in the columns of a newspaper. Massachusetts is an ancient, well organized and polished commonwealth, with a population not exceeded in intelligence or education in the civilized world. The jury system there, I will not presume to discuss. Doubtless it is well adapted to the conditions of an advanced and an enlightened State. But I will not admit, and I distinctly contravert, the proposition that the jury system in California is a failure. That State, in this respect, as in all others, is abreast of the highest phases of modern progress. Its legislation, not perfect—what legislation is?—is nevertheless the result of thought, labor and experience and substantially corresponds to the necessities and the wants of a well-ordered and aspiring Western American community.

There was a time in the history of California, when, in any criminal trial that excited great public interest, part of the examination of a juror was about as follows:

Counsel to Juror: "Have you read or talked of this case?"

"I have."

"From what you have read or heard, have you formed and expressed an opinion as to its merits?"

"I have."

"Is that opinion qualified or unqualified?"

"Unqualified."

"Would it take testimony to remove it?"

"It would."

Counsel: "Challenged for cause."

The Court: "Challenge allowed."

In this way, hundreds of qualified jurors were excused, hearings delayed beyond endurance, and justice in many cases defeated. Thirty years ago, the statutory definition of actual bias was changed so as to read as follows:

"For the existence of a state of mind on the part of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party."

In the same year, by Section 1076 of the Penal Code, the foregoing definition of actual bias was protected by this language: "but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him."

For the purposes of this letter, it is unnecessary to refer to any further legislation in California. The rule there adopted has been on the whole closely applied, and it has worked out excellent results. I will venture to say that California juries in criminal trials will compare not unfavorably with juries in every part of the United States. My own observation does not correspond with Mr. Withington's impressions. I think any of the twelve Supreme Court Judges in San Francisco will state that, instead of one criminal trial per week, the average is several, and that it is not uncommon for two or even three cases to be tried in a single day. In the country districts, I have frequently seen criminal trials pushed with rapidity and precision.

The common law treatment of juries was brutal, and would not be tolerated by the American republic. It is also obvious to my mind that, in modern times, the right to examine every juror to develop the existence or non-existence of a ground of challenge is not only proper, but essential, and especially in places where a considerable part of the population is transitory. Originally juries were summoned from neighborhoods, were generally known, and indeed were supposed to have some familiarity with the facts of each particular case. Now most jurors summoned are unknown to the party accused or to the counsel by whom they are examined. To compel a challenge for cause before a juror is tested on his voir dire would tend to defeat justice and might often result in the condition described by Shakespeare:

"The jury passing on the prisoner's life,  
May in the sworn twelve have a thief or two  
Guiltier than him they try."

The preliminary examination of jurors, to a great degree, is controlled by the discretion vested in competent judges, who are indifferent between the prosecution and the defense, and I cannot perceive in it the slightest analogy to an inquisition or any substitution of trial of jurors for the trial of the prisoner. In most cases, such examinations are brief and rapid. In some cases they might be exact and full. The length of trials depends and should depend upon the facts and circumstances of each particular case. Most trials are short. I have repeatedly observed in Honolulu two or three verdicts in a day. Each case should consume the precise time, and no more, required to subvert the rule of righteous judgment.

Jury trials have been disturbed and affected by arbitrary methods on the one hand and by loose methods on the other. The American system, to which the British system virtually corresponds, is based on the proposition of absolute equality before the law. Some of the longest trials in the history of jurisprudence have occurred in England. The

Tichborne case, I think, was the most elaborate trial on record. No one, however, disputes the fact that practical justice is rigidly applied in Great Britain.

The underlying necessity in criminal jurisprudence, is real and not perfunctory equality before the law. The state or the territory has no legitimate prepossessions. It acts without reference to the personal equation and desires nothing but the conviction of the guilty and the acquittal of the innocent—guilt or innocence to be determined through the existing forms and processes of the law, deliberately and coldly applied, and which, if defective, it is within the legislative authority to amend. A prosecuting officer does not occupy the position of ordinary counsel. He is the representative of justice, alike to the commonwealth and to the accused. There is a sense in which he represents both sides and acts as counsel for the prisoner—that is, in the protection of his legal rights. All cases stand essentially upon an equal footing and there can be no just discrimination between cases. Every trial should take its official course, without either undue precipitancy or undue procrastination. In a case of homicide, the station in life or the personal worth of the victim is not to be considered—except, of course, naturally and properly, by the public. The murder of a President, in itself, is no worse than the murder of a hod-carrier. In the sanctuary of the law, there is no room for preference or for vindictiveness or for revenge. "Vengeance is Mine—I will repay," said the Lord.

It is true that the whole subject of juries has been twisted out of all semblance to its original form. This, social and political advancement, the development of free institutions and the rising value of individual man, have compelled. It will be a bad day for the American Union when, if ever, color, ignorance, degradation, or any conceivable phase of humanity, can abate one jot or one tithe of the protection to which, under our institutions, every human being is equally entitled. It will be a bad day for justice when, if ever, a man charged with crime, is deprived of the right, not to select, but to participate in the selection of the jurors, by whom, under the law, as declared by the court, the issue involving his life or his liberty, is to be determined. HENRY E. HIGHTON.

## MORNING STARS MAY COME HERE FOR GAME

WAILUKU, Sept. 29.—From present indications, it seems that the Morning Star baseball team will go to Honolulu to play one or two games with the Maile Ilima nine. Letters have been received from S. A. Crook, captain of the Maile Ilima Athletic Club, guaranteeing the expenses of the Maui boys. The offer has been accepted, and the Stars are now at practice nearly every evening. The games will probably be played on October 22 and 24, or possibly there may be a Sunday game. This is the first occasion where a Honolulu nine has taken upon itself to invite a team down from the neighboring isle, and this too from the Mailes, who have never been invited to Maui. Local players appreciate this step, and it is almost a certainty that a return game will be played at Wailuku, if not this year, surely the first opportunity that offers next year.

It has not yet been decided definitely just what boys will go to Honolulu, but it will practically be the Morning Star team, with the Kruger brothers, as the battery.

An invitation from the Punahou team has been patiently waited for, but it is believed that on account of their poor standing in the Honolulu league, they have not thought it worth while to invite the Maui boys to Honolulu, and then probably stand a second defeat.

## TAX APPEAL CASES DECIDED BY COURT

Nine decisions were filed by the Tax Appeal Court yesterday.

The Commercial Pacific Cable Co.'s cable out to sea three miles, assessed at \$42,800, is declared not liable to taxation. In the absence of statutory law governing the case, the court adopts the rule of law that in case of doubt the taxpayer should receive the benefit thereof.

Other cases are decided as follows:

Theo. H. Davies & Co., leasehold on Kaunahua street, assessed at \$11,000, reduced by agreement to \$7,500, returned as of no value. Court fixed the amount at \$7000.

Estate of Theo. H. Davies, leasehold at Kapiolani Park, assessed at \$1000; no return. Assessor sustained.

Estate of Emma Kalelelanai, land at Waikiki; assessed at \$15,000, returned at \$8000. Court fixed assessment at \$13,000.

Allen & Robinson, as an enterprise for profit; assessed at \$300,000, returned at \$145,584.00. Assessor sustained.

H. F. Wichman & Co., assessed as an enterprise for profit, at \$125,000, returned at \$2,552.22. Assessor sustained.

J. B. Emerson, land on Spencer street, assessed at \$4000, returned at \$4400; lessors interest in land on Hotel street, assessed at \$4000, returned at \$1200. Assessor sustained in each assessment.

H. F. Wichman, land in Nuuanu valley, assessed at \$1000, improvements assessed at \$1000. Assessor sustained.

Antonia Perry, land on Kawaia street, assessed at \$4000, returned at \$1000. Assessor sustained.

## J. HOPP & CO. WILL MOVE

### They Secure Two Large Stores in the Young Building.

(From Saturday's Advertiser)

Leases were signed yesterday effecting an important change in the retail trade district of Honolulu. J. Hopp & Co., whose lease of the store, occupied by them at the corner of King and Bethel streets for over a quarter of a century ran out last August, yesterday leased from the Alexander Young Building Company two large stores and two basements in the Young Building for furniture salesrooms and warehouses, and also a portion of the large warehouse in the rear of the Young Building, the latter to be used for manufacturing purposes. Hopp & Co. will occupy their new stores on the first of November.

Over twenty-five years ago the late John Hopp opened up a small business as a furniture dealer and repairer at the corner of King and Bethel. At that time King street was a shabby locality. The block now occupied by the Chambers Drug Co., Woods & Sheldon, John Nott, the Union Grill, the Wall, Nichols Co., The Advertiser, Dimond, and other firms was at that time a row of small shacks. On the mauka side of the street the Metropolitan Meat Co. occupied a wooden building, and the coral building recently vacated by Castle & Cooke was classed as one of the most conspicuous structures on the street. Hopp's business prospered. As he needed more room he built additions to the older buildings so that today the lot is covered by one wooden building and a half dozen additions to the old structure. Mr. Hopp died in 1899 and his son-in-law, E. M. Marshall, has carried on an ever increasing business since that time. The business has spread to such an extent that it has outgrown the buildings.

The two stores in the Young Building will be thrown into one by the construction of a large archway through the dividing walls. The firm thus secures floor space for displaying furniture about three times greater in extent than their present quarters. While some manufacturing and repairing will be done in the new premises all mattress making will be done in the warehouse at the rear of the Young Building. The new stores also provide four large show windows.

Hopp & Co. will carry a largely increased stock, and in the magnificent new stores will endeavor to be as enterprising and faithful to the interests of furniture buyers as they have been during their more than twenty-five years of successful trade at the old establishment.

This addition to the number of firms in the Young Building will leave but one vacant store in the building.

## ST. ANDREW'S ANNUAL FAIR

The annual fair given by the Woman's Guild of St. Andrew's will take place on Saturday, October 15, from twelve until six in the Cathedral grounds. Mrs. E. D. Tenney, assisted by our best local charity workers, has the affair in charge, and they are doing everything possible to make the fair this year a success. It will be an occasion that will interest the young people as well as the older ones. Novel and up-to-date games will be features for the children, while the Bazaar will prove of special interest to the ladies. One of the most important features will be the home made New England lunch served between twelve and two. Every business man in the city should make it a point to lunch at the Cathedral grounds on this occasion as this lunch will be well worth the price charged and the cause is a worthy one to support.

The following ladies will have charge of the lunch feature: Mrs. Noonan, chairman; Mrs. C. Crabbe, Mrs. Andrew Fuller, Mrs. Geo. Herbert, Mrs. Percy Benson, Mrs. Faxon Bishop, Mrs. Carl Holloway, Mrs. Walter Hoffman, Mrs. James Spencer, Mrs. George Beckley, Mrs. A. G. Hawes, Mrs. Alvin Clarke, Mrs. E. W. Jordan, Miss Margaret Walker.

The menu comprise: Cold roast chicken, duck, pork, ham; potato salad and cold slaw; baked pork and beans a la Boston, with brown bread; hot rolls and sandwiches; olives, pickles, jellies; coffee and doughnuts.

The Ellis Quintette Club will furnish music and many new musical numbers will be introduced.

Lunch tickets including admission to the grounds will be 75 cents. Admission tickets only 25 cents. Tickets are on sale at the Bergstrom Music Co.'s, Wall, Nichols Co.'s, Hobron Drug Co.'s, Wichman's jewelry store.

## LESLIE WILL SAVE BROKEN FINGER

Lieut. Sam Leslie of the Mounted Police, who broke one of his fingers while behind the bat for the Kamaheha team on Saturday at the league grounds, will not have to have his finger amputated as was at first feared. The finger was so badly broken that the bone protruded through the flesh. He was to have gone to a surgeon yesterday morning to have the amputation done, but a second examination altered this decision.

## LAND DEAL IS ALL OFF

### Purchase Not Exchange Is the Governor's Method.

James B. Castle, although one of the Governor's oldest personal friends, is not going to receive the Kaipapau land on the Koolau side of this island under the bargain of exchange for land in Honolulu needed for street widening which was arranged before Governor Carter came into office.

Instead, the Kaipapau land will be put up at public auction at an upset price of \$1000. The Board of Agriculture and Forestry having marked out the upper portion of the land for the forest reserve, the area remaining is 325 acres. Mr. Castle surrenders a lease of 100 acres.

Land in Waikiki, which was to have been part of the property to be exchanged, will be purchased by the Government, as will land needed for the improvement of Fort Street. The price to be paid for the latter will depend on the amount realized from the Kaipapau land. If that is secured by Mr. Castle at the upset price the Fort Street property will go to the Government for what Mr. Castle paid for it, but if the price of the Kaipapau land is run up by competition full market value will be paid for the Fort Street property.

Governor Carter remarked yesterday that, with this old matter out of the way, the questions of the Polipoli springs and Lahainauna water on Maui would be pretty nearly all of the difficult problems facing him when he took office.

### Irrigation on Maui.

The conservation of the waters of Maui by means of big ditches, eventually supplemented by big reservoirs and mountain tunnels will open thousands of acres of what is now arid land to cultivation, and much of what is now dry and rocky land will one day team with luxuriant crops. The soil and climate of Maui is most peculiarly adapted to agriculture, and water is the one thing needed to make our dry and barren hillsides blossom like the rose.—Maui News.

### Coming Royal Visitor.

Local Japanese will be happy to do honor to Prince Fushimi, who is coming here on his way to America. Both as a member of the royal family of Japan and as a hero of the battle of Nanshan, Prince Fushimi is one to whom all Japanese pay tributes of honor and respect. We hope his stay in Honolulu will be long enough for him to see the loyalty and feel the affection of the Japanese here.—Weekly Hawaii Shinto.

## A PERIL OF HER SEX.

### HOW A KENTUCKY WOMAN MET A CRISIS IN HER LIFE.

Adopts a Resolute Course and Escapes from Troubles Which Had Made Her Wretched for Two Years.

The experience of Mrs. D. C. Wedding, of Hartford, Kentucky, is of value to every woman, as it will point out a certain means of escape from a distressing situation to which time must inevitably bring her. The most critical period in the life of a woman is that attending the change or turn of life. The symptoms attending this period are fainting spells or attacks of faintness or dizziness, headache, general debility, exhaustion, a feeling of melancholy, hysteria, pain in the loins or limbs, etc. The change is a gradual one—for better or worse; for the former if the patient is wise enough to fortify the system against the ravages of the symptoms attending the change.

Concerning the difficulties which she encountered at the change of life, Mrs. Wedding says: "In the spring of 1898, when I reached the turn of life, I was seriously ill and was confined to my bed for six or eight months in all during the two years following. I had chills, fever, rheumatism. My stomach seemed always too full, my kidneys did not act freely, my liver was inactive, my heart-beat was very weak and I had dizziness or swimming in my head and nervous troubles. I was under the treatment of several prominent physicians but they all failed to do me any good."

"After suffering for two years I learned from an Arkansas friend about the merits of Dr. Williams' Pink Pills for Pale People and I decided that I would try them. The very first box I took made me feel better and when I had taken four boxes more I was entirely well, weighed fifteen pounds more than when I began, resumed my household duties, and have since continued in the best of health. I have recommended Dr. Williams' Pink Pills to many people on the basis of what they did for me, and I feel that I cannot praise them too strongly."

"The wonderful blood tonic is a perfect regulator of a woman's system. It builds up nervousness, headache, dizziness, depression of spirits, and carries colds through all the physical crisis peculiar to the female sex. It is sold by all druggists throughout the world."